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BY [Signature]

GERALD ARMSTRONG,

CV-N-97-670-ECR (RAM)

VS.

MINUTES OF THE COURT

DAVID MISCAVIGE, et al.,

DATE: July 9, 1998

PRESENT: EDWARD C. REED, JR. U.S. District Judge

Deputy Clerk: WAYNE JULIAN Reporter: NONE APPEARING

Counsel for Plaintiff(s) NONE APPEARING

Counsel for Defendant(s) NONE APPEARING

MINUTE ORDER IN CHAMBERS

IT IS HEREBY ORDERED that the motions (#9, #10) to dismiss filed by Defendants Church of Scientology International and Religious Technology Center, to the extent they seek dismissal for lack of personal jurisdiction, improper venue, and fugitive disentitlement, are **DENIED**.

I. Background

Plaintiff was formerly a member of the Church of Scientology, but left the church and has allegedly suffered retaliation at the Church's hands. In October 1996 Defendant Cathy Norman, a resident of Texas and member of Defendant Church of Scientology of Texas, mailed a letter (#1, Ex. A) to another church member in Alabama, which letter allegedly defamed Plaintiff. Plaintiff was living in California at the time. Compl. at ¶ 22 (#1). Plaintiff sued Ms. Norman and the Church of Scientology of Texas in November 1997 for defamation and intentional infliction of emotional distress, adding as Defendants the Church of Scientology International ("CSI"), the mother church, and Religious Technology Center ("RTC"), owner of the Church's intellectual property.

II. Personal Jurisdiction

A federal court sitting in diversity applies the law of the forum state when deciding issues of personal jurisdiction. Core-Vent Corp. v. Nobel Industries AB, 11 F.3d 1482, 1484 (9th Cir. 1993). This case was brought in Nevada; however, because Nevada's long-arm statute allows courts to exercise personal jurisdiction over defendants to the maximum extent permitted by the Due Process Clause of the United States Constitution, personal jurisdiction in this case must simply meet the requirements of due process. Firouzabadi v. First Judicial District Court, 885 P.2d 616, 619 (1994) (construing Nev. Rev. Stat. Ann. § 14.065). Moreover, when the jurisdictional issue is

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decided without a full evidentiary hearing, the plaintiff need only make out a prima facie showing of jurisdiction. Firouzabadi, 885 P.2d at 618-19; Ziegler v. Indian River County, 64 F.3d 470, 473 (9th Cir. 1995).

Personal jurisdiction may be general or specific. As for specific jurisdiction, one requirement is that the "defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws." Core-Vent, 11 F.3d at 1485; see Trump v. District Court, 857 P.2d 740, 747-50 (1993). Ms. Norman's letter plainly fails to meet this requirement, nor does Plaintiff even attempt to explain how it could meet this requirement: the letter was neither sent to Nevada nor mailed from Nevada, Plaintiff did not live in Nevada at the time he received a copy of the letter, and Plaintiff has not alleged any reputational harm suffered in Nevada. Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1321 (9th Cir. 1998) (discussing "purposeful availment"). This is not sufficient to grant us specific jurisdiction; indeed, Plaintiff's Opposition (#20) does not explicitly claim specific jurisdiction.

Instead, Plaintiff claims general jurisdiction. General personal jurisdiction exists where "the defendant's activities in the forum state are so substantial or continuous and systematic that it may be deemed present in the forum and hence subject to suit over claims unrelated to its activities there." Firouzabadi, 885 P.2d at 619; Gordy v. Daily News, L.P., 95 F.3d 829, 836 (9th Cir. 1996). It is undisputed that neither CSI nor RTC are located in Nevada or otherwise have any facilities or offices in Nevada. Plaintiff's basis for general jurisdiction is instead that these two organizations are the alter egos of the Nevada branch of the Church of Scientology. Compl. at ¶ 6 (#1).

The procedure for assessing personal jurisdiction on an alter ego basis before trial, where supporting affidavits have been submitted, is outlined in AT&T Co. v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588 (9th Cir. 1996): the affidavits must make a prima facie showing of personal jurisdiction, and the evidence must be viewed in a light most favorable to the party seeking jurisdiction. In this case Mr. Armstrong's Declaration (#21 at ¶ 32) is sufficient to establish continuous and systematic contacts by CSI as alter ego of the Church of Scientology of Nevada ("CSN") (located in Las Vegas). Specifically, CSN is a "lower level franchise" controlled by CSI, CSI management personnel have continual contact with CSN personnel and control CSN's activities, CSI missionaries travel to Nevada and have the authority to issue orders to CSN and enforce compliance with those orders, and CSI controls the staff changes and finances of CSN (and every other CSI franchise). This is sufficient to make out a prima facie case for "unity of interest and ownership," beyond the "normal parent-subsidiary relationship," necessary to establish "alter ego" jurisdiction over CSI. Id. at 591. The assertions regarding Defendant RTC are to the same effect. Armstrong Decl. at ¶ 36 (#21).

III. Improper Venue

Because we possess personal jurisdiction over Defendants, venue is proper in Nevada. 28 U.S.C. § 1391(c).

IV. Fugitive Disentitlement

It may be true that Plaintiff sued in Nevada because he has an outstanding bench warrant in California, but Defendants offer no authority for the proposition that this alone disentitles him from maintaining a separate action in this District, nor have we found any such authority.

V. Subject Matter Jurisdiction

The asserted basis for our subject matter jurisdiction is diversity of citizenship. Plaintiff bears the burden of demonstrating subject matter jurisdiction. Lew v. Moss, 797 F.2d 747, 751 (9th Cir. 1986). In this case, Plaintiff claims to have been a citizen of Nevada at the time he filed suit. Id. at 750 (citizenship is determined at time of filing). A U.S. citizen is a citizen of a state for diversity purposes if he is domiciled there; that is, if he has established a fixed habitation or abode in a particular place, and intends to remain there permanently or indefinitely. Id. at 749-50. Physical presence is a central and ordinarily necessary factor in determining domicile. Hendrix v. Naphtal, 971 F.2d 398, 400 n.2 (9th Cir. 1992). Where a party has recently moved, physical presence in the new state is required to effectuate a change in domicile and a person's established domicile is the presumptive one until a new one is acquired. Lew, 797 F.2d at 750-51. Additionally, a U.S. citizen domiciled outside the United States may not maintain a diversity action. Brady v. Brown, 51 F.3d 810, 815 (9th Cir. 1995).

Plaintiff does not dispute that until November 1997 he was domiciled in California. Mr. Armstrong must therefore demonstrate a physical presence in Nevada as of November 24, 1997, as well as a fixed habitation or abode in Nevada and an intent to remain here permanently, sufficient to overcome the presumption that he was then domiciled in California. Although Defendants assert that Plaintiff is still legally domiciled in California, and offer considerable evidence that he has been living in British Columbia since no later than December 1997, Mr. Armstrong's declaration states that he works in Nevada, possesses a Nevada driver's license, and keeps his personal property in Nevada. Compare Armstrong Decl. (#10, Ex. H) with Armstrong Decl. at ¶ 9 (#21). He also states that he "stays" in Nevada, and has done so since November 1997, but is afraid of specifying his address because he fears Defendants' retaliation. Armstrong Decl. at 21 (#21).

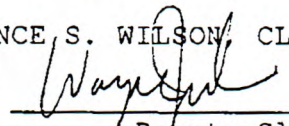
Since the threshold question in any federal lawsuit is our subject matter jurisdiction, we will set an evidentiary hearing to resolve the disputed issues of material fact outlined above.

IT IS FURTHER ORDERED that decision on Defendants' motions (#9, #10), to the extent they seek dismissal for lack of subject matter jurisdiction, are **DEFERRED** pending an evidentiary hearing.

IT IS FURTHER ORDERED that an evidentiary hearing is set for **Tuesday, August 18, 1998, at 10:00 am**, to consider the Court's subject matter jurisdiction in this case. Plaintiff shall have two hours, and Defendants shall jointly have two hours, to present evidence, testimony, and argument.

LANCE S. WILSON, CLERK

By


Deputy Clerk